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UNITED NATIONS DECADE OF INTERNATIONAL LAW

Report of the Working Group on the United Nations Decade of International Law

Chairman: Mr. Sani L. MOHAMMED (Nigeria)

INTRODUCTION

1. The General Assembly, in its resolution 47/32 of 25 November 1992, requested the Working Group on the United Nations Decade of International Law to continue its work at the forty-eighth session in accordance with its mandate and methods of work.

2. Pursuant to that resolution, the Sixth Committee, at its 3rd meeting, on 4 October 1993, elected Mr. Sani L. Mohammed (Nigeria) as Chairman of the Working Group on the United Nations Decade of International Law for the forty-eighth session.

3. The Working Group had before it the report of the Secretary-General requested under paragraphs 5 and 6 of resolution 47/32 (A/48/312), containing an analysis of the replies received, in accordance with that resolution, on the implementation of the programme for the second term (1993-1994) of the Decade, as well as a report on the activities of the United Nations relevant to the progressive development of international law and its codification; the report of the Secretary-General on a preliminary operational plan for a possible United Nations congress on public international law (A/48/435), prepared pursuant to paragraph 7 of resolution 47/32; and the report of the Secretary-General on the protection of the environment in times of armed conflict (A/48/269), submitted pursuant to paragraph 4 of General Assembly resolution 47/37 of 25 November 1992.

4. The Working Group held six meetings between 6 October and 16 November 1993, during which it discussed the above-mentioned three reports of the Secretary-General.

I. REPORT OF THE SECRETARY-GENERAL ON THE IMPLEMENTATION OF THE SECOND TERM (1993-1994) OF THE DECADE

5. The Working Group took note of the report of the Secretary-General on the implementation of the second term (1993-1994) of the Decade. It also expressed its appreciation to those States and international organizations and institutions which had submitted relevant information to the Secretary-General, and called on all States and international organizations and institutions referred to in the programme for the Decade to submit further reports on the activities undertaken under the programme.

II. REPORT OF THE SECRETARY-GENERAL ON THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT

6. In accordance with paragraph 4 of General Assembly resolution 47/37, the report of the Secretary-General on the protection of the environment in times of armed conflict contains information submitted by the International Committee of the Red Cross (ICRC). In the light of this fact, the representative of ICRC was given the floor as an exceptional measure, to introduce the report and to answer questions raised by delegations in this regard.

7. In introducing the report, the representative of ICRC referred to a number of existing rules on the protection of the environment in times of armed conflict. He made the point that ICRC shared the conclusion reached by the three meetings of experts organized under its auspices, that there was no immediate need for a comprehensive codification of such rules. He observed that the consideration of the report by the Working Group could provide the opportunity for a renewed appeal to States to respect their obligations relating to the protection of the environment in times of armed conflict. He further expressed the hope that the draft guidelines for military manuals and instructions on the protection of the environment in times of armed conflict, annexed to the report, would in due course be forwarded to States with the recommendation that they be included in military manuals. In this connection, he expressed the readiness of ICRC to submit a revised set of guidelines on the basis of the comments made by States.

A. General comments

8. Delegations expressed their appreciation to ICRC for the preparation of the report. There was widespread agreement with the view of ICRC that no general codification of the rules protecting the environment in times of armed conflict should be undertaken at the current stage, and that emphasis should be placed on increased compliance with, and dissemination of, those rules. The importance of wide participation in the relevant international instruments was also stressed. In this connection, the point was made that it would be useful to have a list of those instruments and the States parties thereto. It was observed that national and regional measures for the protection of the environment in times of armed conflict were particularly important. The view was expressed that, as ICRC had pointed out, there might be a need for clarification and development of certain existing rules. Some delegations suggested that ICRC should continue its

consideration of issues put forward in paragraph 110 of the report of the Secretary-General.

9. The view was expressed that the Sixth Committee should remain seized of the question of the protection of the environment in times of armed conflict as part of its consideration of the item on the United Nations Decade of International Law, but that substantive work on the subject should continue within the framework of ICRC. In this connection, it was observed that the Sixth Committee could provide its views and suggestions, where appropriate, in order to assist the work of ICRC and other competent bodies in this field. There was the view that this question should continue to be discussed within the item on the Decade of International Law annually. But there was also the view that it should be discussed every two years.

B. Comments on specific sections of the report

10. With respect to section II.C.3, dealing with international rules concerning the protection of the environment, reservations were expressed on the conclusions drawn in paragraph 32 as regards articles 35 and 55 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977. 1/ The point was made that this instrument, as any convention, was only binding upon States parties thereto; the view was also expressed that, wherever customary rules were embodied in a particular instrument, they were binding on all States, irrespective of whether they were a party to that instrument.

11. In connection with section II.C.6, on the question of implementation, the obligation of States to disseminate international humanitarian law was underscored. The adoption of both national and regional measures was called for in this respect.

12. Concerning section II.E.4, dealing with the relationship between international humanitarian law and international environmental law, doubts were expressed as to the appropriateness of an extensive study of this matter.

13. With regard to section II.E.9, dealing with grave breaches and State responsibility, the point was made that these were two distinct issues, which had to be considered separately.

14. In connection with section II.E.10, on the applicability of the precautionary principle to the protection of the environment in times of armed conflict, the point was made that this emerging principle was indeed applicable in times of armed conflict. However, doubts were also expressed with regard to this principle and its applicability.

15. The importance of section II.E.11, relating to the protection of the environment in times of non-international armed conflict, was particularly underscored.

16. As to section II.F, concerning the position of ICRC, support was expressed for the conclusion that the environment would be adequately protected in times of armed conflict if several aspects of the existing law were elaborated on and if that law were more fully implemented. Reservations were, however, expressed with respect to several suggestions made in this regard in paragraph 106.

C. Comments on section G, containing the conclusions of the report of ICRC

17. Doubts were expressed about the suggestion that the relationship between the ENMOD Convention 2/ and Additional Protocol I 3/ should be examined by a committee of experts established under the ENMOD Convention, in particular, to interpret or clarify the terms "widespread, long-lasting/long-term and severe" which appeared in those instruments. It was noted that the authority of interpretation or clarification in respect of terms employed in a treaty was reserved for the parties to that treaty, and it was neither appropriate nor legally effective to entrust a body of experts with such a task. It was also noted that the precise meaning of the terms in question would have to be determined in the specific context of each treaty and the relationship between the two instruments or terms therein was not of immediate legal interest.

18. With respect to the questions of the applicability in armed conflict of international environmental law and the general clarification and action in case of revision of the treaties, some representatives questioned the utility of a general study on the subject, as well as the feasibility of producing "realistic and effective solutions" quickly for the problem, as suggested. Others considered the problem of environmental protection in times of armed conflict to be of such importance as to warrant a special study and called on competent bodies to do so. The suggestion was made that the revision of treaties should be left to the proper amendment procedure provided under each instrument.

19. The suggestions concerning the protection of the environment and restriction on the use of mines and the action to be taken during the Conference for reviewing the 1980 Convention on the Prohibition of the Use of Certain Conventional Weapons 4/ were noted for information. It was observed that the legality of the use of any new weapon should be treated as a separate issue.

20. Some representatives considered the question of the protection of cultural sites and nature reserves and parks to be of high priority and expressed support for the recommended action. While there was the suggestion that the protection of cultural sites and that of nature reserves and parks were two different issues and should therefore be treated separately, the view was also expressed that a special link between the two issues could exist, as recognized in treaties such as the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, 5/ as well as in certain national programmes. It was further suggested that the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 6/ had established a mechanism for the definition and the registration of sites, and that what might be necessary was to increase participation in the Convention, rather than to develop existing law, as suggested. It was also suggested that the Sixth Committee could play a role in developing existing law in this area.

21. A number of representatives emphasized the importance of the question of the protection of the environment in times of non-international armed conflict and the possible application of the rules applicable in times of international armed conflict. The suggestion was made that, while respecting the views of ICRC to the contrary, there might be a need for developing the existing law, since the rules protecting the victims of non-international armed conflict were less well developed than those governing international armed conflict. There was also the suggestion that the subject could be reviewed by the International Law Commission in the context of its work on international liability for injurious consequences arising out of acts not prohibited by international law.

22. There was general support in principle for the statement made in paragraph 110 (e) (i) to the effect that it was difficult to contemplate that acts prohibited in international armed conflicts might be permitted in non-international armed conflicts. The point was, however, made that the concept needed clarification. The view was also expressed that it was difficult to accept the total elimination of the distinction between international and non-international armed conflicts. As regards the observation in subparagraph (ii) that in some cases global environmental considerations should prevail over a State's sovereignty, some representatives expressed reservations concerning the generality of the statement, while others supported the concept as an important principle of environmental protection.

23. Concerning the means of implementing provisions on the protection of the environment in times of armed conflict and the possible role of the International Fact-Finding Commission provided for in article 90 of Protocol I of 1977, some delegations considered such a role helpful. However, the remark was made by others that the reference to the International Fact-Finding Commission was not appropriate, since the functions of the Commission were relevant only in respect of those High Contracting Parties to Protocol I which had, at the time of signing, ratifying or acceding to the Protocol, accepted the competence of the Commission by a special declaration. Doubts were expressed about the utility of questionnaires as an effective means of implementing provisions on environmental protection in times of armed conflict. The representative of ICRC clarified that the questionnaires in question were those already part of the reporting systems under various existing environmental treaties. The suggestion was also made that, in addition to such means of implementation to be undertaken at the international level, States concerned should be encouraged to accept and apply corresponding measures of implementation at the national level.

24. With respect to the dissemination of provisions protecting the environment in times of armed conflict, the view was expressed that this was a high-priority area. It was suggested that appropriate steps should be taken at both the international and the national levels.

25. The Working Group expressed appreciation of the draft Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict, 7/ prepared by ICRC in consultation with experts. There was general support for the suggestion that the draft should be circulated to Governments with a request that they provide ICRC with their comments on the draft. A view was expressed that such comments should be transmitted to ICRC through the Secretary-General. ICRC could then, on the basis of those comments,

finalize the draft and submit it to the Sixth Committee. The Swiss authorities offered to host an intergovernmental meeting if this would assist the process. Some delegations expressed the view that such a meeting would expedite the finalization of the guidelines. Other delegations expressed the view that it was for ICRC to decide how to proceed on this matter.

26. In the course of preliminary remarks on the guidelines, a reservation was expressed with respect to the first sentence of paragraph 3, to the effect that it did not clearly indicate the extent to which the guidelines were the expression of international customary law or of treaty law binding a particular State, and furthermore that the guidelines by their nature could not be treated as binding as suggested by the use of the word "must" in that sentence. The importance of maintaining a clear distinction in the guidelines between the rules of universal applicability and the rules binding only States parties to the relevant treaties was stressed.

27. It was suggested that the Sixth Committee could also consider the broader issue emanating from the guidelines which concerned the international protection of victims of war. Reference was made, in particular, to the proposals for strengthening legal protection for the provision of humanitarian assistance to the victims of armed conflicts and for imposing international restrictions on the use in internal conflicts of the most destructive and indiscriminate types of weapons, primarily military aircraft and artillery-rocket systems. It was further suggested that the Sixth Committee might be assigned to work on a code of conduct applicable to conflicts of a non-international character.

III. REPORT OF THE SECRETARY-GENERAL ON A PRELIMINARY OPERATIONAL PLAN FOR A POSSIBLE UNITED NATIONS CONGRESS ON PUBLIC INTERNATIONAL LAW

28. The Working Group welcomed the report of the Secretary-General on a preliminary operational plan for a possible United Nations congress on public international law, introduced by the Legal Counsel.

29. The representatives expressed their support for an informal paper containing a draft programme for the congress introduced by the Chairman of the Working Group during the meeting and circulated among the delegations, which read as follows:

"United Nations Decade of International Law: draft programme for a United Nations Congress on public international law

"Purpose

"1. The Congress would be organized within the framework of the United Nations Decade of International Law to promote the role of international law in international relations.

"2. Participants at the Congress would be invited to express their views on the codification, progressive development and implementation of public international law, taking into account both theory and practice of international law, its teaching and dissemination, with a view to assisting the legal profession, States that have recently joined the international community, and the general public to meet the challenges and expectations of a new world order.

"3. The theme of the Congress would be 'Towards the twenty-first Century: International Law as a Language for International Relations'. The sub-themes of each of the five days should follow the identified themes of the Decade.

"Time

"1. The Congress should be convened at United Nations Headquarters, in New York, in 1995, immediately after the end of the second week of the 1995 session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

"2. The duration of the Congress would be five working days, with two plenary meetings in the morning (10 a.m.-1 p.m.) and afternoon (3-6 p.m.).

"Organizational matters

"1. The Office of Legal Affairs [in consultation with the members of the Sixth Committee] should be charged with the responsibility of organizational matters of the Congress.

"2. The Secretariat should consider all detailed issues regarding participation, notice thereof, admission, selection of speakers and to the extent possible be guided by equitable representation of all regions and judicial systems in order to avoid undue representation.

"Finance

"1. The Congress should be held within existing resources and be assisted by voluntary contributions.

"2. Government and non-government institutions should be invited to make voluntary contributions towards the financing of the Congress.

"3. To cover the cost of additional publicity, the possibility of allowing some publishers to display their publications should be explored.

"4. Travel and subsistence of some designated speakers from the least developed countries should be borne through the funds from external financing."

A. Purpose of the congress

30. With respect to the purpose of the congress, the Working Group generally found the formulation contained in the above draft programme to be acceptable. However, it was observed that the expression "a new world order" was not acceptable and that it should be replaced by some other expressions such as "the world today" or "the present-day world". It was also stated that the work of the congress should not result in the adoption of a declaration or any other kind of formal or binding document. It was suggested that at least several lectures of the most prominent speakers should be published after the completion of the work of the congress. The need to have a discussion on well-defined topical questions, including such issues as space law, rather than on traditional topics discussed within the framework of the United Nations Decade of International Law was also emphasized. The point was also made that the congress should not become another meeting of government representatives, but should rather be as informal and non-governmental as possible. A suggestion was made that the Working Group should reach an agreement on the formulation of the themes for the congress and sub-themes for discussion during its work. Responding to this suggestion, the Working Group agreed to five major sub-themes for the discussion which would follow the identified purposes of the Decade, as formulated in the Chairman's informal paper circulated in the Working Group, which read as follows:

"General theme of the Congress: Towards the twenty-first century: International Law as a Language for International Relations

"Sub-themes should follow the identified purposes of the Decade:

"1. The principles of international law: theoretical and practical aspects of their promotion and implementation.

"2. Means of peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice.

"3. Conceptual and practical aspects of the codification and progressive development of international law: new developments and priorities.

"4. New approaches to research, education and training of international law and its wider appreciation.

"5. Towards the twenty-first century: new challenges and expectations."

31. As to the draft theme for the congress as contained in the informal paper, a suggestion was made that it should be reformulated so as to avoid the use of the expression "as a language for international relations". There was also the view that the statement in the form of a theme for the congress was not necessary.

B. Timing of the congress

32. In connection with the timing of the congress, all delegations supported the idea of convening the congress at United Nations Headquarters in New York in 1995, in order to allow for sufficient time for its preparation. Most of them favoured the option of convening the congress immediately after the end of the second week of the 1995 session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The view was also expressed that the possibility should be considered of convening the congress in conjunction with the 1995 session of the Special Committee, but without limiting the work of the Committee to two weeks. Some of the representatives spoke in favour of convening the congress during the 1995 regular session of the General Assembly, within the framework of the Sixth Committee. As to the duration of the congress, it was agreed to allocate to it five working days, with two plenary meetings each day, one in the morning (10 a.m.-1 p.m.) and one in the afternoon (3-6 p.m.). The possibility of organizing during the congress a plenary meeting in the morning and one or more consecutive, not simultaneous, working group meetings on specific issues in the afternoon was, however, also envisaged. There was also a suggestion that exchanges of views among the participants in the congress between formal meetings could be promoted.

C. Organizational matters

33. It was agreed to entrust the Office of Legal Affairs of the Secretariat of the United Nations with the responsibility of the organization of the congress, including all detailed issues regarding participation, admission, selection of speakers and topics, etc. The point was made that instead of holding formal consultations with the missions to the United Nations, including members of the Sixth Committee, the Office of Legal Affairs should informally contact them and keep them informed on the progress on the organization of the congress. While the need to ensure fair, equitable representation of all regions and legal systems to the extent possible in the selection of speakers was pointed out, it was also observed that a similar approach should be followed to open up possibilities for participation in the congress. The point was made that participation should include a wide range of professionals active in the field, so as to avoid a transformation of the congress into another conference of government representatives. A specific suggestion was made that the invitation of lawyers practising private law, including those who represent multinational companies and others who also have to deal frequently with issues of public international law, as well as lawyers from developing countries, should be envisaged in the organizational plan.

D. Financial issues

34. All the representatives emphasized that the congress should be held within existing resources and be assisted by voluntary contributions. In this connection, it was noted that allocation of additional resources for public information coverage of the congress, as suggested, in particular, in paragraph 22 of the report of the Secretary-General on the subject, was unacceptable. With respect to the types of governmental financial assistance,

it was noted that such assistance could be in the form of donations in cash or of coverage of the travel and subsistence costs of speakers. The need for financial assistance to the representatives of developing countries was emphasized. It was also pointed out that financial contributions from non-governmental sources should not lead to disproportionate and unfair representation at the congress.

E. Recommendations

35. The Working Group decided to recommend that the United Nations congress on public international law be held in 1995 as proposed and that the Secretariat proceed with its preparation and keep the Member States informed of the status of the preparations.

Notes

1/ United Nations, Treaty Series, vol. 1125, No. 17512, p. 3.

2/ Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 10 December 1976 (General Assembly resolution 31/72).

3/ See note 1, above.

4/ Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (United Nations, Treaty Series, vol. 1342, No. 22495, p. 137).

5/ United Nations, Treaty Series, vol. 1037, No. 15511, p. 151.

6/ Ibid., vol. 249, No. 3511, p. 240.

7/ A/48/269, annex.